

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 10/597,909

Group Art Unit: 1651

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Examiner: Irene Marx

Applicant(s): OLSTEIN, Alan D.

Atty. Docket: 21001.012US

Title: **SELECTIVE GROWTH MEDIUM FOR *LISTERIA* spp**

**TRANSMITTAL OF MISSING REQUIREMENTS OF
APPLICATION FILED UNDER 35 USC §371**

Mail Stop: AMENDMENT

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

To the Commissioner:

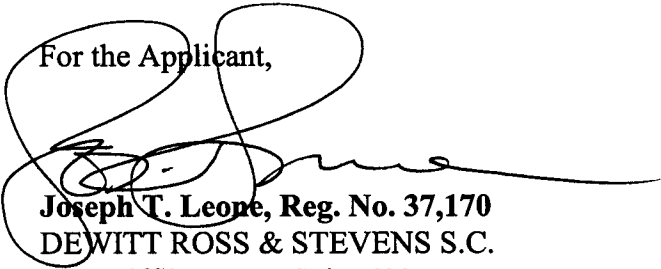
In response to the restriction requirement dated March 24, 2010, Applicant provisionally elects, **with traverse**, Group I, Claims 1-13, 15, 25-27, and 29-31.

Even in the national phase of a PCT application, restriction is proper only if the restricted claims are independent or patentably distinct and there is no serious burden placed on the Examiner if restriction is not required (MPEP §803). The burden is on the Office to provide reasons and/or examples to support any conclusion of patentable distinctness between the restricted claims (MPEP §803). Applicant respectfully traverses the restriction requirement on the grounds that the Office has not carried the burden of providing any reason and/or example to support the conclusion that the claims of the restricted groups are, in fact, distinct. Specifically, Applicants object to the Office's conclusion that the claims do not relate to a single general inventive concept.

The Office states that a technical relationship between the claims is lacking because "media for *Listeria* as claimed are known in the art," citing to Lee & McClain (of record). The claims, however, require a medium that "enhances" the growth of *Listeria* (Claim 1), not a medium that simply "allows" *Listeria* to grow. See Lee & McClain, page 1215, right-hand column, bottom.

Applicants therefore respectfully submit that all of the claims are drawn to a unified inventive concept and should therefore be examined together. Applicants thus traverse the subject restriction requirement and respectfully request that it be withdrawn.

For the Applicant,



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